

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1952 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

MASURBHAI G BARIA

Versus

EXECUTIVE ENGINEER

Appearance:

Mr.P.Upadhyay for MR TR MISHRA for Petitioner

Mr.B.D..Desai, learned A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/05/97

ORAL JUDGEMENT

In response to this court's order dated 29.4.97, the concerned Executive Engineer Shri A.R.Modi, Panam Project Department (Circle), Godhra is also present. Both the sides have been heard.

Petitioner was a Rojamdar in the Panam Project Department (Circle) at Godhra. It is not disputed before this Court that the petitioner was a permanent employee

since 24.2.85 and while being in employment of the Government Department he had contested elections for the post of Sarpanch. Copies of the letter sent to the petitioner by the Section Officer of the Sub-Division No.2, Malekpur and the letter dated 30.6.92 sent to him by the Workcharge Clerk show that the petitioner contested the elections of the Sarpanch while being in Government service and, therefore, he was discharged from the services on 30.6.92. The petitioner raised an industrial dispute and on reference being made, the Labour Court, Godhra passed an order on 23.9.96 rejecting the Reference. Against this order rejecting the Reference, the petitioner has approached this Court.

From the pleadings, copies of the documents on record and the Award it is clearly made out that the petitioner has contested the elections while being in Government employment and had thus contravened the provisions of Rule 5 of Gujarat Civil Service (Conduct) Rules, but it is also given out that the moment he realised this fact, he resigned from the post of Sarpanch. It is submitted that he had worked as Sarpanch for a couple of months. It is also clear that the petitioner was subjected to the termination of services on the ground of aforesaid misconduct without any charge-sheet and without following the procedure prescribed with regard to the holding of the inquiries under the Discipline and Appeal Rules applicable to him. This aspect of the matter has not been effectively adjudicated by the Labour Court and the Reference has been rejected. It is, therefore, clear that the impugned order rejecting the Reference suffers from an error of law apparent on the face of the record, the same is in breach of the relevant rules and the fact that a permanent employee has been removed from service without any formal charge-sheet and without holding inquiry and thus the relevant Disciplinary and Appeal Rules have been contravened, has been totally brushed aside. The order passed by the Labour Court is clearly in total disregard of the principles of natural justice and the Rules, as aforesaid. In this view of the matter, the order passed by the Labour Court cannot be sustained in the eye of law. Accordingly the impugned order dated 23.9.96 passed by the Labour Court, Godhra is hereby quashed and set aside. Having considered in entirety the facts of the case, I am not inclined to remand the matter to the Labour Court. It is a case of technical misconduct and breach of Rules by a Class IV employee, who had contested the elections for the office of Sarpanch. That by itself could not be used for the purpose of removing him from services. The punishment of removal from service in the

light of the element of the misconduct appears to be excessive and disproportionate.

This Special Civil Application, therefore, succeeds. The impugned order dated 23.9.96 rejecting the Reference is hereby quashed and set aside. The respondents are directed to reinstate the petitioner with continuity of service and pay him the due amount of wages. It will ofcourse be open for the concerned Executive Engineer to satisfy himself as to whether the petitioner has remained out of employment throughout i.e. right from the date of his removal from service till the date he is reinstated. He may call upon the petitioner to file an affidavit in this regard. It will also be open for the concerned Executive Engineer to pass appropriate orders imposing adequate penalty against the petitioner, but such penalty will be short of removing him from the job. The orders with regard to reinstatement of the petitioner shall be issued on or before 9.5.97, but so far as the wages are concerned, the concerned Executive Engineer may pass appropriate orders at the earliest possible opportunity but in no case later than 31.5.97 and in doing so he may also keep in view the period for which the petitioner has worked as a Sarpanch. This Special Civil Application is allowed accordingly and the Rule is also made absolute in the terms as aforesaid with no order as to costs.